

**398 IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

**(1) CRA S-86-SB of 2010 (O&M)
Decided on : 23.9.2015.**

Shamsher and another

...Appellants

Versus

State of Haryana

...Respondent

(2) CRR No. 718 of 2010 (O&M)

Mahender Singh

...Petitioner

Versus

State of Haryana and others

...Respondents

CORAM : Hon'ble Mr. Justice Jitendra Chauhan

Present : Mr. Sunil Saharan, Advocate for
Mr. Jitender Dhanda, Advocate,
for the appellants.

Mr. Gurpal Sandhu, Advocate for
Mr. SPS Sidhu, Advocate,
for the petitioner in CRR No.718 of 2010.

Mr. Arun Luthra, AAG, Haryana.

JITENDRA CHAUHAN, J.

This judgment shall dispose of afore-mentioned two
cases one criminal appeal filed by the accused-appellants seeking

setting aside of the judgment of conviction dated 21.12.2009, and the order of sentence dated 23.12.2009, passed by the Additional Sessions Judge, Hisar, whereas, criminal revision has been filed by the complainant seeking conviction of the accused-appellants under Section 307 IPC as well.

The accused appellants were convicted and sentenced as under:-

Offence	Sentence	Fine	In default
323/34 IPC	RI for 6 months	--	--
325/34 IPC	RI for 2 years	Rs.2000/-	RI for 2 months
506 IPC	RI for 2 years	Rs.2000/-	RI for 2 months

The substantive sentences were ordered to run concurrently.

The case of the prosecution is that on 12.10.2008 at 8.45 PM complainant Mahender Singh went towards water tank and he found that Shamsher Singh accused-appellant armed with iron rod and Dhira @ Randhir accused-appellant armed with lathi were beating his uncle Mukhtiar Singh. He called them whereupon both the accused after threatening his uncle with dire consequences fled away. He got his uncle admitted in the General Hospital, Hisar wherefrom, the injured was shifted to Sapra Hospital, Hisar. On 13.10.2008 the complainant got recorded his statement to the Police wherein, he narrated the whole occurrence and also stated that the motive behind the incident was that a month prior to that day, an altercation had taken place between the

injured Mukhtiar Singh and accused, on account of which, Mukhtiar Singh was given injuries. On the basis of statement of Mahender Singh Ex. P-25, FIR Ex. P-27 was registered against the accused-appellants under Sections 308, 323, 506 read with Section 34 IPC.

After completion of investigation, challan/report under Section 173 Cr.P.C was presented against the accused-appellants before the Area Magistrate.

Learned Area Magistrate after complying with the provisions of Section 207 Cr.P.C, committed the case to the Court of Session.

Charges under Section 323, 307, 506 read with Section 34 IPC were framed against the accused to which they pleaded not guilty and claimed trial.

In order to bring home the guilt of the accused, prosecution examined PW-1 Dara Singh Patwari, PW-2 ASI Rajinder Singh, PW-3 Dr. YP Singhmar, PW-4 Dr. Tarun Sapra, PW-5 Mukhtiar, PW-6 Dr. Anil Bansal, PW-7 complainant Mahender and PW-8 Dharambir Singh and closed its evidence.

The accused were examined under Section 313 Cr.P.C and all the incriminating circumstances appearing in the prosecution evidence were put to them to which they denied and pleaded false implication. It was pleaded by the accused that they have been falsely implicated due to party faction in the village.

The accused examined Satbir as DW-1 and closed

evidence in defence.

After appraisal of the evidence, learned trial Court vide judgment of conviction dated 21.12.2009 and order of sentence dated 23.12.2009 convicted the accused appellants under Sections 323, 325 and 506 read with Section 34 IPC and sentenced them to undergo imprisonment as narrated above. However, the accused were acquitted of the charge under Section 307 IPC.

Feeling dissatisfied with the impugned judgment and order, the accused-appellants have preferred criminal appeal No. S-86-SB of 2010 for setting aside their conviction and sentence, which was admitted on 13.1.2000.

The complainant Mahender Singh has filed criminal revision No. 718 of 2010 for convicting the accused under Section 307 IPC as well, which was admitted on 15.9.2011 and ordered to be heard along with Criminal Appeal No. S-86-SB of 2010.

On behalf of the accused-appellants, it is contended that there is unexplained delay of one day in lodging the FIR as the incident took place on 12.10.2008 whereas, the FIR was registered after due deliberations on 13.10.2008 at 6.35 P.M. He further contends that the injured being an alcoholic used to create nuisance and in fact, the injuries, were caused by the complainant himself. The FIR is the result of hostility generated due to the altercation, which had taken place between the appellants and the complainant a month prior to the date of

occurrence. The version, as put forth by the prosecution, is result of

concoction to frame the appellant. The complainant, Mahender Singh was not an eye witness to the occurrence as reflected in the FIR. Therefore, the deposition made by him in the context of the occurrence deserves to be inquired into. He lastly submits that there are contradictions in the statements of PW-3, Dr. Y.P. Singhmar and PW-4, Dr. Tarun Sapra with regard to the health status of the injured. PW-3 Dr. Y.P. Singhmar has stated that the injured was fully conscious and fit to make a statement whereas, in the version given by the Dr. Tarun Sapra, it has come that the injured was unfit to make a statement. PW-4 Dr. Tarun Sarpa has categorically admitted in his cross-examination that there was no bony fracture detected either in CT scan or in x-ray film from head to foot. In the proximity of the occurrence, there was Primary Health Centre in the nearby village i.e Bangali but despite that, the injured was removed to General Hospital, Hisar and thereafter, further removed to a private Hospital run by Dr. Tarun Sapra.

On the other hand, the learned State counsel assisted by learned counsel for the complainant has submitted that the FIR lodged by the complainant is duly corroborated by the version given by the injured. He further states that no suggestion was made to PW-5, Mukhtiar Singh with regard to the injuries having been caused by the complainant. There is no evidence to substantiate the argument with regard to causing injuries to the injured by the appellants. It is further submitted that the appellants gave as many as 21 injuries on the various parts of the body of injured including the vital part, thus a prayer is

made to maintain the judgment and order by the Trial Court. Therefore, a case against the appellants is made out under Section 307 IPC.

I have heard learned counsel for the parties and have gone through the record of the case.

In this case, the incident took place on 12.10.2008 at 8:45 pm and 21 injuries noticed on the person of the injured. On the next morning at 9:15 am, the injured was medico-legally examined at General Hospital, Hisar. The Medico-Legal Report records the history of assault near village Siharwa as recorded in the FIR. This shows that the place of occurrence was disclosed to the Doctor at the time of admission i.e. at 9:15 am on 13.10.2008. The injured had explained to him that he became unconscious on the spot and was unaware of the place he was shifted to. PW-7, Mahender had stated that he had taken the injured to his house and they reached there at 10 pm. He was alone and had not informed the village Sarpanch. Condition of Mukhtiar was serious and he was unconscious so he was taken to village Miran in a bullock cart and thereafter to village Mangali but the doctor was not available at both these places, he left village Mangali at 6:00 am and thereafter, arranged a four wheeler and shifted Mukhtiar to General Hospital, Hisar. Further, there is evidence of PW-3, Dr. Y.P. Singhmar that he referred the patient to PGIMS, Rohtak on the same day but the patient was shifted to Sapra Hospital, where he was admitted at 2:00 pm with a history of assault including a head injury. The Doctor opined

that the injured was unfit to make a statement vide Ex.P-20. So, the

statement of nephew of the injured i.e. Mahender Singh was recorded.

It has come in the evidence that both, the injured and his brother were present at Dr. Sapra's hospital. Had the complainant tried to implicate the accused falsely, he would have projected the brother of injured as an eye witness to the occurrence but this was not done. As per the recrd, the version of alleged assault with regard to the place and time was noticed at 9:40 am when the injured had been admitted in General Hospital, Hisar and thereafter, the statement of complainant Mahender Singh was recorded in the evening. It is a natural and instinctive conduct of a prudent person that when a family member is injured, the first anxiety of the family is to get the injured treated. Therefore, a few hours delay is understandable and is bound to occur as the anxiety of the attendant for getting the injured treated can be said to be misplaced. Therefore, in the present case, the delay is well explained.

Otherwise also, the prompt lodging of the FIR is not insisted as a ritual rather it is emphasized so that the possibility of any embellishment, concoction or deliberation may be discarded. In the instant case, the occurrence took place at 8:45 pm on 12.10.2008. In the night itself, he was taken to village Miran on bullock cart, doctor not being available, he was taken to village Mangali where again the doctor was not available. In these circumstances, on the next day, i.e. on 13.10.2008, the patient was admitted in Govt. hospital at 9:50 am with a history of assault with specific place and time. Again, he was shifted

to a private hospital at 2.00 pm. In the evening, the complainant got

recorded his statement at 6.35 pm. Had the complainant been actuated by deliberations, he would have roped in the entire family of the accused but this was not done, which again lends credence to the case of the prosecution and discards the possibility of any concoction. Therefore, there does not appear to be any false implication.

Now adverting to the next argument that the injuries were self suffered. It has come in the evidence of DW-1, Satbir that the injured was lying near the pond adjoining the waterworks. If the complainant himself wanted to cause hurt to the injured then he would have done the same in the privacy of his house and there was no necessity to do the act in a public place. Otherwise also, the argument is in the air and has no legs to stand. During the trial, the accused have nowhere taken this plea that the injuries were caused by the complainant himself. Neither any suggestion was given to any of the prosecution witnesses nor was such a plea taken by the accused in his statement under Section 313 Cr.P.C. Therefore, the argument pales into insignificance and the defence plea is an after thought.

The next contention that due to hostility generated on account of altercation which took place a month prior to the occurrence, the accused have been falsely implicated, looks attractive but the same has no force. The motive assigned for false implication goes against the case of accused-appellants. The oral testimony of the injured on oath is duly corroborated by the testimony of complainant

that the accused-appellants inflicted injuries upon the injured. Rather

there was a motive for the accused-appellants to cause injuries to Mukhtiar on account of previous enmity. Therefore, the argument stands rejected.

The last argument advanced by learned counsel for the appellants is that there are contradictions in the statements of PW-3 Dr. Y.P. Singhmar and PW-4 Dr. Tarun Sapra as PW-3 Dr. Y.P. Singhmar has stated that the injured was fully conscious and fit to make a statement whereas in the version given by the Dr. Tarun Sapra, it has come that the injured was unfit to make a statement.

The argument carries no force because PW-3 Dr. Y.P. Singhmar has nowhere stated that the injured was fit to make statement. Neither Ex.P-18 (opinion given by the doctor) nor the statement given in the Court supports the argument of learned counsel for the appellants. The injured whether admitted or not admitted in one hospital or the other does not affect the case of prosecution as this fact is remotely connected with the fact in issue. There is no illegality or infirmity in the impugned judgment of conviction and order of sentence.

In view of what has been observed above, the appeal filed by the accused-appellants stands dismissed.

Now adverting to the revision petition, filed by the complainant, learned counsel for the revisionist states that the trial Court fell in error in convicting the accused-appellants under Sections 323 and 325 IPC alone in view of the fact that the injured was attacked

indiscriminately and there were as many as 21 injuries on his person and the injury No.1, on the head of the injured, was declared dangerous to life, therefore, the judgment of conviction and order of sentence passed by the trial Court are liable to be modified to the extent that appellants should also be convicted for the offence punishable under Section 307 IPC.

The mere fact that PW-4 Dr. Tarun Sapra declared injury No.1 on the person of injured Mukhtiar Singh to be dangerous to life, would not by itself make out an offence under Section 307 IPC. In

Atma Singh v. The State of Punjab , 1982 (2) Chandigarh Law

Reporter 496, a Division Bench of this Court held that:

“When the doctor is required to carry out medico legal examination of the injury suffered in a criminal assault, he is required to examine the injury from two stand-points (1) for the purpose of opining the kind of weapon used to inflict the injury in question and (2ndly) to form an opinion regarding the degree of seriousness of the injury in order to enable to see as to what offence has the accused committed by inflicting the injury in question. The Indian Penal Code recognises from stand point of seriousness only four types of injuries (1) simple injuries, (2) grievous, (3) injuries of the kind inflicting with intent to commit murder described in clause Firstly

and 2ndly of Section 300 of the Indian Penal Code, (4) injury sufficient to cause death in the ordinary course of nature envisaged by clause Thirdly of Section 300 of the Indian Penal Code. There is no provision in the Indian Penal Code which envisages or refers to an injury described as 'dangerous to life'. The medico legal examination of an injured person is intended to enable the Investigating Agency and the Court to find out the nature of the offences and, therefore, the doctor examining an injured person has to opine that the injury in question is one or the other of the type recognised in the Indian Penal Code for the purposes of a given offence. When a doctor describes an injury as 'dangerous to life' one has to see what had the doctor intended to convey thereby. Is one to hold that since injury has not been described by the doctor as one which 'endangered life', so the concerned injury cannot be held to be grievous on the specious ground that an injury described as 'dangerous to life' is not as serious an injury which 'endangers life'.

To make out an offence under Section 307 IPC, intention or knowledge on the part of the offender to commit murder is necessarily required.

Section 307 IPC reads as under:-

“Attempt to murder:- Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned.

Attempts by life convicts:- When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.”

The said section is in two parts. The first part envisages such intention or knowledge and such circumstances that the act done by the offender would cause death and he would be guilty of murder. This would constitute an offence of attempt to murder and is punishable for a term which may extend to ten years and also fine. The second part relates to causing of hurt by such an act i.e. having intention or knowledge and under such circumstances that by such an act death would be caused and the offender would be guilty of murder.

This also constitutes an offence of attempt to murder. In this case,

however, the punishment is imprisonment for life or to such extent as mentioned earlier. The requirement of the offence is the intention or knowledge that the act done is such that death would be caused and the offender would be guilty of murder but death is not caused or the injured does not die. This would be an aspect of attempt to murder.

In the present case, PW-4 Dr. Tarun Sapra had opined that no bony fracture was detected either in CT scan or in x-ray film from head to foot. The patient responded to treatment and his condition improved each subsequent day. So, from the nature of injury and the attending circumstances, it can not be said that there was an intention on the part of accused-appellants to cause the death of Mukhtiar Singh-injured nor the injury is shown to be such that would result in the death of the injured. The learned trial Court rightly came to the conclusion that the injury is a 'grievous one'. The same indeed cannot be said to be one which constitutes an offence under Section 307 IPC. Even if the said injury has been described as 'dangerous to life', that would in the facts and circumstances of the case be an injury which 'endangers life' as mentioned in clause eight of Section 320 IPC and would be an injury which can be designated as "grievous". Therefore, the trial Court has rightly acquitted the accused-appellants of offence under Section 307 IPC and convicted them under Sections 323, 325 and 506 IPC.

In view of the observations made above, the revision

filed by the complainant is dismissed.

As regards the quantum of sentence, learned counsel for the appellants submits that all injuries except injury No.1 were on non-vital parts. The accused have been facing the agony of protracted trial for the last seven years. They are first offenders. They are the only bread winners of their respective families. Appellant No.1 Shamsheer is married and has three children. Appellant No.2 Randhir Singh is also married and has two minor children and aged parents. There is nobody to look after their families. So, a prayer for taking lenient view regarding quantum of sentence has been made.

Keeping in view the mitigating circumstances enumerated above, this Court is of the opinion that the ends of justice would be met in case the sentence of accused-appellants is reduced from two years to one year under Sections 325 and 506 IPC, however, the same shall be subject to payment of Rs. 1 Lac each as compensation to the injured. It is ordered accordingly. The sentence of fine shall remain intact.

The accused-appellants are on bail. They be taken into custody to serve the remaining part of the sentence.

23.9.2015.
SN

(JITENDRA CHAUHAN)
JUDGE